

FINAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Specific Purpose:

Pertinent sections are amended to add a definition for "Sexual Orientation."

Factual Basis:

Pertinent sections are adopted to implement Assembly Bill (AB) 1856, Statutes of 2012, which amended Welfare and Institutions (W&I) Code section 16001.9(a) to afford the personal right to all foster children to have a caregiver that has received instruction in cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual and transgender (LGBT) youth in out-of-home care. This change is necessary to add a definition for "Sexual Orientation" where one did not previously exist, ensuring that these regulations are consistent with accepted terminology.

The definition for Sexual Orientation, as well as many other LGBTQ specific terms, is continually evolving as we learn more about this population. Our definition for Sexual Orientation began with the definition found in CWLA Best Practice Guidelines: Serving LGBT Youth in Out-of-home Care^[1] and the GET R.E.A.L. document: *Transgender and Gender Nonconforming Children in California Foster Care*, Family Builders, National Center for Lesbian Rights, Center for the Study of Social Policy (2016)^[2], and was refined through discussions with stakeholders including the authors of these publications. The updated definition specifies that for the purpose of these regulations "Sexual Orientation" describes a person's emotional, romantic or sexual attraction to others that may be shaped at an early age. The comment received during public comment brought to our attention that stating Sexual Orientation "is" established at an early age is not as correct as stating that it "may be" established at an early age. Therefore, a small revision was made to clarify that sexual orientation 'may be' established at an early age.

b) Sections 83001(s)(1), 84001(s)(2), 86001(s)(1) and 88001(s)(1)

Final Modification:

The word "is" is changed to "may be" for clarify purposes.

[1] Wilber, Shannon, Caitlin Ryan, and Jody Marksamer. CWLA Best Practice Guidelines: Serving LGBT Youth in Out-of-home Care Washington, DC: Child Welfare League of America, 2006. Print

[2] <http://www.cssp.org/reform/child-welfare/get-real/what-we-do/body/TGNC-Children-in-CA-Foster-Care-Feb-2016.pdf>

c) Local Mandate Statement

There are no "state-mandated local costs" in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code (GC) because any costs associated with the implementation of these regulations are costs mandated by the federal government within the meaning of Section 17513 of the GC.

The previous statement that was made in the Initial Statement of Reasons regarding a local mandate was made in error. These regulations will only apply to licensees of children's residential facilities and, therefore, create no local mandate in accordance with Section 17513 of the GC.

d) Statement of Alternatives Considered

Pursuant to GC section 11346.99(a)(4), the California Department of Social Services (CDSS) organized regular stakeholder meetings beginning on July 29, 2014, with representatives from Family Builders, National Center for Lesbian Rights, the RISE project and the Get R.E.A.L. project to discuss these regulations. During this process, no alternative implementation strategies for AB 1896 were presented. The CDSS is authorized to develop and implement regulations in order to impose rules on our licensees. The CDSS has determined that regulations are necessary to clearly communicate licensing requirements, has responded to stakeholder comments and believes the requirements contained in these regulations are the best option for implementing the statutory requirements of AB 1896.

The CDSS has determined that determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

e) Statement of Significant Adverse Economic Impact On Business

The CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the fact that businesses that currently offer training to Group Home Administrators or Caregivers need only add another training topic. This addition need not be significant as the statute does not require a specific amount of time spent on this training topic. The cost of adding instruction in cultural competency and sensitivity as it relates to best practices for LGBT youth should be absorbable.

d) Testimony and Response

These regulations were considered as Item # 1 at the public hearing held on September 28 2016, in Sacramento, California. Written testimony was received from the following during the 45-day comment period from August 12, 2016 to 5:00 p.m. September 28, 2016.

Comments from County Welfare Directors Association of California (CWDA)

1. Sections 83001, 84001, 86001 and 89201

Comment:

The CWDA believes that haircuts defining "gender expression" may be considered offensive, as some individuals wear certain haircut styles and others cut their hair short due to medical issues. Therefore, CWDA do not believe haircut styles necessarily communicate to gender identity.

Response:

We thank you for your comments; however we cannot accept this recommendation at this time. While CDSS understands that haircuts may be demonstrative of a personal sense of style and not necessarily a communication of one's gender it is an important example to include as it informs caregivers that to deny their foster youth a certain haircut can be a denial of respect to the child's gender expression.

2. Sections 83072(d)(2) and 86072(c)(9)(C)

Comment:

The CWDA believes that removing a gift as a form of discipline has many negative implications for a child who may only value a few precious items, especially if those items have any family-related or sentimental worth.

Response:

We thank you for your comments; however, we cannot accept this recommendation at this time. This section refers to the prohibition of items that can be a risk to the child's health and safety as well as a positive approach to discipline. Similar language has existed in the Group Home regulations and is added here to support a consistent application of Personal Rights to all foster children.

3. Sections 83087(b)(2)(B) and 89387(a)(2)(A-C)

Comment:

The CWDA is questioning whether a prospective roommate is asked about sharing his/her bedroom with a child who anatomically is of the opposite gender and if an opportunity is given to the individual to express his/her discomfort and rejecting of the room arrangement. In addition, the CWDA is suggesting an adult advocate of the prospective roommate be involved in the decision.

Response:

We thank you for your comment; however, we cannot accept this recommendation at this time as CDSS has already built protections in for the prospective roommate. Please see draft regulations section 83087(e):

"In every situation where children share a bedroom, the licensee shall document that the bedroom sharing arrangement ensures the health and safety of each child and that the children are compatible. When considering compatibility a licensee shall consult with children in their care, in an age and developmentally appropriate manner, regarding the child's sexual orientation and gender identity and what information the child wishes to disclose and to whom. A licensee shall not disclose information about the child's sexual orientation and/or gender identity against the child's wishes, unless compelled to do so by law or court order. This documentation shall be maintained in the child's record."

4. Section 86001(t)(3)

Comment:

The CWDA states that Orange County allows participants in the Transitional Housing Program-Plus (THP-Plus) who are up to age 24.

Response:

We thank you for your comment; however, we cannot accept this recommendation. It is outside the scope of this regulations package. The CDSS will be amending the THPP regulations and we will note that definition to be changed with those regulations.

Comment from Orange County

1. General Comment

Comment:

As a general note, the building and grounds section, specifically as it applies to how many children per room, etc, is not consistent with what Orange County has heard about up to four in a bedroom and a potential change in the age for opposite genders in bedrooms.

Response:

Resource Family Approval (RFA) is a county implemented program for family based care for children in out-of-home placement. The provision allowing four to a bedroom and the accompanying change in age for different genders sharing a bedroom applies only to Resource Family Homes approved under RFA. The proposed regulations in this package do not make changes to Resource Family Homes standards.

Comments from Legal Services of Northern California (LSNC)

1. Section 83001(g)(1)

Comment:

The LSNC believes that the proposed definition of "Gender Expression" should be updated to reflect that gender expression is external.

Response:

We thank you for your comment; however we cannot accept this recommendation at this time. The CDSS formed these definitions based on *Transgender and Gender Nonconforming Children in California Foster Care*, Family Builders, National Center for Lesbian Rights, Center for the Study of Social Policy (2016): <http://www.cssp.org/reform/child-welfare/get-real/what-we-do/body/TGNC-Children-in-CA-Foster-Care-Feb-2016.pdf> , *CWLA Best practice guidelines for serving LGBT Youth In Out of Home Care* as well as consultation with stakeholders.

2. Section 83001(g)(1)

Comment:

The LSNC believes that the proposed definition of "Gender Identity" should be updated to be an internal sense of one's gender or one's innermost concept of oneself as male, female, blend of both or neither.

Response:

We thank you for your comment; however, we cannot accept this recommendation at this time. The CDSS formed these definitions based on *Transgender and Gender Nonconforming Children in California Foster Care*, Family Builders, National Center for Lesbian Rights, Center for the Study of Social Policy (2016): <http://www.cssp.org/reform/child-welfare/get-real/what-we-do/body/TGNC-Children-in-CA-Foster-Care-Feb-2016.pdf> , *CWLA Best practice guidelines for serving LGBT Youth In Out of Home Care* as well as consultation with stakeholders.

3. Section 83001(s)

Comment:

The LSNC disagrees with the proposed definition of "Sexual Orientation," which states that sexual identity is shaped at an early age and that sexual identity is static and cannot be changed.

Response:

We thank you for your comment, and upon further review, CCLD has decided to make an unsubstantial change to the definition to clarify that sexual orientation *may* be shaped at an early age.

4. Section 83001(t)

Comment:

The LSNC believes that the proposed definition of "Transgender" needs to be updated to include those who identify as gender non-conforming.

Response:

We thank you for your comment; however, we cannot accept this recommendation at this time. The CDSS formed these definitions based on *Transgender and Gender Nonconforming Children in California Foster Care*, Family Builders, National Center for Lesbian Rights, Center for the Study of Social Policy (2016): <http://www.cssp.org/reform/child-welfare/get-real/what-we-do/body/TGNC-Children-in-CA-Foster-Care-Feb-2016.pdf> , *CWLA Best practice guidelines for serving LGBT Youth In Out of Home Care* as well as consultation with stakeholders.

5. General Comment

Comment:

The LSNC states, "We are concerned about the proposed definitions. The proposed regulations rely on definitions from 2006 that should be updated."

Response:

Many LGBTQ specific terms are continually evolving as CDSS learns more about this population. Our definitions began with the definitions found in many texts including CWLA Best Practice Guidelines: Serving LGBT Youth in Out-of-home Care[1] as well as more recently published papers including: Transgender and Gender Nonconforming Children in California Foster Care, Family Builders, National Center for Lesbian Rights, Center for the Study of Social Policy (2016) and evolved through discussions with stakeholders. We held regular meetings to consult with experts in this field regarding issues facing the LGBT community as well as the context in which certain terms are utilized. The definitions in these regulations were informed by our research and these experts, and specifically crafted to best inform caregivers who serve foster youth.

h) 15-Day Renotice Statement

Pursuant to GC section 11347.1, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. The following testimony was received as a result of the 15-day renotice:

Comments from County of Santa Clara, Social Services Agency

1. Pertinent Sections

Comment:

The county suggests in the sections that refer to clothing and personal items, it regulations should specify that children/youth shall be allowed to wear clothing that aligns with their preferred gender expression.

Response:

The subsection regarding clothing and personal items in the Personal Rights sections incorporates a reference to W&I Code section 16001.9 (a)(23), which states that every foster child has the right NOT to be discriminated against based on gender identity. Therefore, these regulations require that clothing and personal items meet all the criteria of that section of statute which prohibits any discrimination based on gender identity. As such, the Department appreciates the comment but no changes will be made to this section.

2. Pertinent Sections

Comment:

The county suggests in the sections that refer to access to medical treatment, the Department should include transition-related medical care. The LGBTQ legal agencies typically interpret AB 458 to imply that dependent transgender youth should be allowed to access transition-related medical care if it is recommended by a doctor.

Response:

We thank you for your comment; however, we cannot accept this recommendation. The implementation of AB 458 is outside the scope of this regulations package.